

§ 1705.25

12 CFR Ch. XVII (1–1–08 Edition)

§ 1705.25 Further proceedings on the application for award.

(a) On request of either the applicant or agency counsel, on the adjudicative officer's own initiative, or as requested by the Director of OFHEO under § 1705.27, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidential hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application for award and shall be conducted as promptly as possible. The issue as to whether the position of OFHEO in the underlying adversary adjudication was substantially justified shall be determined on the basis of the whole administrative record that was made in the underlying adversary adjudication.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought on the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1705.26 Decision of the adjudicative officer.

(a) The adjudicative officer shall make the initial decision on the basis of the written record, except if further proceedings are ordered under § 1705.25.

(b) The adjudicative officer shall issue a written initial decision on the application for award within 30 days after completion of proceedings on the application. The initial decision shall become the final decision of OFHEO after 30 days from the day it was issued, unless review is ordered under § 1705.27.

(c) In all initial decisions, the adjudicative officer shall include findings and conclusions with respect to the applicant's eligibility and an explanation of the reasons for any difference between the amount requested by the applicant and the amount awarded. If the applicant has sought an award against

more than one agency, the adjudicative officer shall also include findings and conclusions with respect to the allocation of payment of any award made.

(d) In initial decisions on applications filed pursuant to § 1705.4(a), the adjudicative officer shall include findings and conclusions as to whether OFHEO made a demand that was substantially in excess of the decision in the underlying adversary adjudication and that was unreasonable when compared with that decision; and, if at issue, whether the applicant has committed a willful violation of the law or otherwise acted in bad faith, or whether special circumstances would make the award unjust.

(e) In decisions on applications filed pursuant to § 1705.4(b), the adjudicative officer shall include written findings and conclusions as to whether the applicant is a prevailing party and whether the position of OFHEO was substantially justified; and, if at issue, whether the applicant unduly protracted or delayed the underlying adversary adjudication or whether special circumstance make the award unjust.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1705.27 Review by OFHEO.

Within 30 days after the adjudicative officer issues an initial decision under § 1705.26, either the applicant or agency counsel may request the Director of OFHEO to review the initial decision of the adjudicative officer. The Director of OFHEO or his or her designee may also decide, on his or her own initiative, to review the initial decision. Whether to review a decision is at the discretion of the Director of OFHEO or his or her designee. If review is ordered, the Director of OFHEO or his or her designee shall issue a final decision on the application for award or remand the application for award to the adjudicative officer for further proceedings under § 1705.25.

[65 FR 26732, May 9, 2000. Redesignated and amended at 65 FR 81328, Dec. 26, 2000]

§ 1705.28 Judicial review.

Any party, other than the United States, that is dissatisfied with the final decision on an application for

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award of fees and expenses under this part may seek judicial review as provided in 5 U.S.C. 504(c)(2).

§ 1705.29 Payment of award.

To receive payment of an award of fees and other expenses granted under this part, the applicant shall submit a copy of the final decision that grants the award and a certification that the applicant will not seek review of the

decision in the United States courts to the Director, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Washington, DC 20552. OFHEO shall pay the amount awarded to the applicant within 60 days of receipt of the submission of the copy of the final decision and the certification, unless judicial review of the award has been sought by any party to the proceedings.

SUBCHAPTER B [RESERVED]